



Council of the
European Union

Brussels, 20 September 2017
(OR. en)

12404/17

CONSOM 305
MI 644
JUSTCIV 215

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Danish non-paper on using behavioural insights to promote active
european consumers in relation to point 11
(Fitness check of EU consumer and marketing legislation)
of the COMPET Council agenda of 29 May 2017

Delegations will find in annex the above-mentioned document.



USING BEHAVIOURAL INSIGHTS TO PROMOTE ACTIVE EUROPEAN CONSUMERS

The Fitness Check of the consumer area evaluates if EU consumer law is fit for purpose on the basis of the criteria of effectiveness, efficiency, coherence, relevance and EU added value of the existing EU legislation.

The Fitness Check is an important exercise, because active consumers are an important part of the Single Market, as active consumers make demands on businesses which give them incentives to provide better service. This can lead to an improvement in competition and create well-functioning markets. The result of the Fitness Check will hopefully make it easier for consumers and businesses to navigate within the area of the directives that are subject to the Fitness Check.

Behavioral insights refers to the range of behavioral science research into how biases influence consumer decision making. The term has gained prominence as a result of the wealth of research calling into question the traditional assumption that consumers and citizens act like rational agents in the marketplace. Behavioral insights are an obvious mean to ensuring that regulation aligns with actual consumer behavior to the benefit of both consumers and businesses.

The gap between the intended consumer protection of information disclosure requirements and the observed consumer behaviour especially calls for the consideration of insights from behavioural sciences.

This non-paper aims at emphasizing the importance of continuing the implementation of behavioural insights in the refit and development of EU consumer and marketing law.

From Full Disclosure to Targeted Disclosure

This non-paper argues that we should strive to shift from full information disclosure to better targeted information disclosure based on evidence, impact assessments and behavioural insights.

When regulation forces businesses to expose consumers to large quantities of information at once, there is a risk of consumers being uncritical and inactive. Furthermore, an overload of information limits the comparability of products across providers. This implies that the actual effect of the regulation may be counterproductive – for the consumer as well as for competition in markets.

The purpose of disclosure requirements is to create greater transparency in the market, so that consumers can consider conditions and costs relating to e.g. credit agreements. The rationale behind full disclosure of information is to provide for consumers to understand their choices and be able to make an informed decision.

However, one important challenge is that such requirements determine that the information must often all be disclosed at the same time, hindering the ability to create innovative solutions that could make it easier for consumers to understand the conditions of the product or service being sold to them – e.g. by presenting it in a more user-friendly way. It can be challenging for consumers to comprehend the amount and complexity of information in current disclosure formats. Moreover, this challenge is particularly clear in an electronic format across digital platforms, due to limited clarity on electronic handheld devices such as smartphones. In other words, the current rules - which are in principle technologically neutral - actually make it harder to develop solutions that would help inform and activate consumers, and improve competition in the market, thus making the rules more effective.

Insights from behavioural sciences has led to the recognition of the fact that consumers are not acting *rational* in every purchase situation, even when adequate information is fully disclosed to the consumer. A recent study by the Danish Competition & Consumer Authority identified significant limitations in consumers' ability to understand and use disclosed information when presented with mortgage loan offers from three different providers.

We suggest that the Commission start a practice of field testing new disclosure requirements and/or reviewing existing requirements retrospectively and revising them. In the process of applying or revising information disclosure regulation to better target the consumers, considerations ought to be given to five tests in policy design:

- I. What are the desired behavioural outcomes aimed for?
- II. Will the information provide sufficient incentive for consumers to optimise their choice-behaviour?
- III. To what extent does the information simplify choices for consumers on a nice- /need to know basis?
- IV. Are burdens for businesses disproportional to expected benefits for consumers?
- V. Are existing regulated information requirements taken into account?

Furthermore, policy-makers at the EU-level should consider:

- a. To pilot the use of outcome-based approaches to information requirements, enforced on the basis of consumers' understanding of the information rather than the sheer availability of the information.
- b. Assigning research to develop concrete proposals on how information requirements might be presented in a more compact electronic format.
- c. Establishing partnerships across member states and stakeholders to develop innovative approaches to communicating with consumers.
- d. To test significant future information requirements before implementation and evaluate according to the Joint Research Centre's taxonomy of behavioural policy interventions.
- e. To include information disclosure requirements in the scope of reviews of relevant legislation so that requirements may be re-designed or removed unless proven effective in improving outcomes.

Further suggestions for review

In terms of ensuring the effect of information disclosure requirements and legislation fit for the digital age, we also suggest reviewing the following:

- Directive on electronic commerce (2000/31/ED)
- Directive on consumer credit (2008/48/EC)
- Directive on credit agreements for consumers relating to residential immovable property (2014/17/EU)

References

Better Regulation Executive and National Consumer Council (2007) "Warning: too much information can harm..." <http://www.eurofinas.org/uploads/documents/policies/NCB-BRE-Report.pdf>

Sousa Lourenço, J., Ciriolo, E., Almeida, S., & Troussard, X. (2016). Behavioural insights applied to policy. *JRC science for policy report: European Union*.

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